

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

PEREZ FUNCHES,)	
)	
Plaintiff,)	
)	
vs.)	CIVIL NO. 07-cv-226-JPG-DGW
)	
RACHEL L. EBBER, et al.,)	
)	
Defendants.)	

MEMORANDUM AND ORDER

GILBERT, District Judge:

In a prior Memorandum and Order Plaintiff was notified that, pursuant to *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007), the Court would sever Counts 6 and 7 of the complaint from this action, open a separate case for those claims, and assess a filing fee for that new case, unless Plaintiff moved to voluntarily dismiss these Counts. *See* (Doc. 24). The time for responding to the Court's notification was extended several times, *see* (Docs. 25 and 37), and has now expired. Plaintiff has not voluntarily dismissed Counts 6 and 7.

Accordingly, Counts 6 and 7 are **ORDERED SEVERED** from this cause of action and the Clerk is **DIRECTED** to open Counts 6 and 7 as a separate action and assign a new case number. A second filing fee will shall be assessed against Plaintiff. The details regarding the payment of filing fees and Plaintiff's *in forma pauperis* status will be designated by separate Order in the newly severed action.

Further, the pending motion for summary judgment filed by Defendants Love, Ryker, and

Walker (Doc. 43) will be a pending motion only in the newly severed action and will **not** remain a pending motion in this action. The notice filed by Defendants Love, Ryker, and Walker concerning their motion for summary judgment (Doc. 44) shall be filed in the newly severed case.

The pending motion for summary judgment filed by Defendants Ebbert and McCorkle (Doc. 41) along with Plaintiff's motion for an extension of time to file a response to this motion (Doc. 45) shall remain pending in this action (07-cv-226-JPG).

The Clerk is **DIRECTED** to file a copy of this Memorandum and Order in the newly severed action for reference.

Plaintiff's motion for a stay (Doc. 46) is **DENIED** as moot.

Plaintiff is **ADVISED** that appeals from any Order entered in the newly severed action may not be appealed in this present action, 07-cv-226-JPG, but must be appealed in the severed action only.

IT IS SO ORDERED.

Dated: November 3, 2008.

s/ J. Phil Gilbert
U. S. District Judge